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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,046	07/13/2005	Hiroyuki Fujimoto	MAM-069	6347
20374	7590	06/15/2007	EXAMINER	
KUBOVCIK & KUBOVCIK SUITE 710 900 17TH STREET NW WASHINGTON, DC 20006			MARTIN, ANGELA J	
			ART UNIT	PAPER NUMBER
			1745	
			MAIL DATE	DELIVERY MODE
			06/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/542,046

Applicant(s)

FUJIMOTO ET AL.

Examiner

Angela J. Martin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Office Action is responsive to the Remarks filed on March 22, 2007. A new rejection is presented for the following reasons of record.

#### ***Claim Rejections - 35 USC § 102/103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kotsuki et al., JP 2002-042813.

Rejection of claims 1, 5-11 drawn to a battery.

Kotsuki et al., teach a nonaqueous electrolyte secondary battery using a material capable of storing and releasing lithium as a negative electrode material and a lithium transition metal complex oxide containing Ni and Mn as the transition metal and

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having a layered structure as a positive electrode material (abstract) said secondary battery, and that an outer casing of said battery is composed at least partly of an aluminum alloy or aluminum laminate film and susceptible to deformation in case of internal pressure buildup due to gas generation within the battery during storage (0053-0054). The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide is represented by the formula  $\text{Li}_{.a}\text{Mn}_{.x}\text{Ni}_{.y}\text{Co}_{.z}\text{O}_{.2}$  (wherein a, x, y and z are numbers satisfying  $0 \leq a \leq 1.2$ ,  $x+y+z=1$ ,  $x > 0$ ,  $y > 0$  and  $z \geq 0$ ) (0014). The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide contains substantially the same amount of nickel and manganese (0033). The nonaqueous electrolyte secondary battery as recited in claim 5, characterized in that said lithium transition metal complex oxide contains substantially the same amount of nickel and manganese (0033). The nonaqueous electrolyte secondary battery as recited in claim 6, characterized in that said lithium transition metal complex oxide has a BET specific surface area of not greater than  $2 \text{ m}^2/\text{g}$  (0079).

Thus, the claims are anticipated.

However, if the claims are not anticipated, in the alternative, they are obvious because although Kotsuki et al., do not teach a pH value within the range of 9.0-11.0 when it is immersed in purified water in the amount of 5 g per 50 ml of the purified water, the pH would be in the range of 9-11 since Kotsuki teaches the same positive electrode material as the Application. Additionally, although Kotsuki does not recite

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lithium transition metal complex oxide has a BET specific surface area of less than 3 m<sup>2</sup>/g, Kotsuki teaches the same positive electrode material as the Application and would have the same BET specific surface area. Although the prior art of record does not recite the cell case having a thickness of up to 0.5 mm, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an optimum thickness of the case in order to avoid deformation of the case wall, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### **Conclusion**

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Inamasu, JP 07-142093 (machine translation), teaches a nonaqueous electrolyte secondary battery using a material capable of storing and releasing lithium as a negative electrode material and a lithium transition metal complex oxide containing Ni and Mn as the transition metal and having a layered structure as a positive electrode material (abstract) and a pH value within the range of 9.0-11.0 when it is immersed in purified water in the amount of 5 g per 50 ml of the purified water (abstract; 0008).

Takami et al., JP 2000-235868 teaches a lithium nonaqueous secondary battery.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AJM